

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.5759 of 2019

Date of decision : 13.09.2019

Naresh Kumar

.... Petitioner

Versus

Ganesh Chand and Ors.

.... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Kushagra Mahajan, Advocate for the petitioner.

B.S. Walia, J.

[1] Prayer in the revision petition under Article 227 of the Constitution of India is for setting aside order dated 21.08.2019 passed by the learned Civil Judge (Jr. Div.), Amritsar dismissing the application filed by the petitioner for leading additional evidence. Further prayer is that the petitioner be permitted to examine Pardeep Khemkha to prove gift deed dated 16.07.1993.

[2] Brief facts of the case leading to the filing of the revision petition are that the petitioner filed a suit for mandatory injunction against the respondents to vacate and deliver vacant possession of H.No.2517/2 situated inside Mohan Singh Gate, Gali Ranga Pipal Wali, Bazar Bakkarwana, Amritsar on the basis of registered gift deed dated 16.07.1993 executed by Bimla Devi in his favour.

Respondents in the written statements denied gift deed dated
16.07.1993, instead asserted that they were legal heirs of the owner of the

property, thus entitled to the property in dispute to the extent of their share in the same.

[3] That as per the case set up by the petitioners, one Ram Niwas s/o Devi Dutt besides S.K. Bhagat, Advocate were attesting witnesses to the said gift deed and at the time of leading evidence, it had come to the knowledge of the petitioner that Ram Niwas had died whereas the whereabouts of the legal heirs of Ram Niwas were not found, besides, S.K. Bhagat, Advocate was also not traceable, therefore, the petitioner was not able to lead affirmative evidence to prove the gift deed dated 16.07.1993.

[4] That on 30.03.2019, the petitioner moved an application for examining Pardeep Khemkha s/o Ram Niwas who had been traced by the petitioner and who was claimed to be conversant with the handwriting of his father Ram Niwas, therefore, was in a position to prove the gift deed dated 16.07.1993.

[5] The respondents filed reply and submitted that the evidence of the petitioner was closed in August, 2018 whereas the application for additional evidence had been filed at the fag end of the trial only to delay the proceedings and to gain time.

[6] On the basis of the pleadings and after hearing counsel for the parties, the learned Civil Judge (Jr. Div.), Amritsar dismissed the application for leading additional evidence. Learned counsel while reiterating the submissions made before the learned Civil Judge (Jr. Div.), Amritsar, prayed for setting aside of the impugned order and for being allowed to lead additional evidence.

[7] I have considered the submissions of learned counsel. Admittedly, process was issued for summoning Ram Niwas, one of the attesting witnesses to the gift deed but the same was received back with the

report that he had expired and his son had supplied copy of his death certificate. However, the same was not exhibited by the petitioner nor were any steps taken to summon the legal heirs of the deceased Ram Niwas nor was any effort made to summon S.K. Bhagat, Advocate and evidence was closed. It was only when the case was at the final stage that application for additional evidence was moved.

[8] Learned Civil Judge (Jr. Div.), Amritsar recorded that the plaintiff (petitioner herein) had been afforded sufficient opportunities to conclude his evidence and it was his duty to bring the best evidence to the Court to prove his case but nothing had been placed on the record as to what circumstances prevented the petitioner/plaintiff from enquiring about the whereabouts of Pardeep Khemka s/o Ram Niwas especially once in response to summon's issued to Ram Niwas, it had come on the record that Ram Niwas had expired and his son had furnished a copy of the death certificate of his father.

[9] It is settled law that the power under Section 151 CPC is not intended to be used routinely or merely for the asking. Otherwise, the same would defeat the very purpose of providing for expeditious conduct of trials. It is only when the application for leading additional evidence is bona fide and will assist the Court to clarify the evidence on the issues and the Court is satisfied that non-production earlier was for valid and sufficient reasons, that the Court may exercise its discretion to recall witnesses or permit additional evidence to be led but if the application is found to be a cover-up for negligence or for filling up lacunae, it should be rejected with heavy costs. Relevant extract of the decision of Hon'ble the Supreme Court in **K.K. Velusamy vs N. Palanisamy, 2011 (11) SCC 275** on the point in

“16. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”

[10] In the instant case, the petitioner had full knowledge of the fact that the attesting witness, Ram Niwas had died whereas no attempts were made to summon S.K. Bhagat, Advocate, the other marginal witness. The summon issued to Ram Niwas, attesting witness was received back with the

report that he had expired and his son had supplied the copy of the death certificate of his father, therefore, it was apparent that the address of the legal heirs of Ram Niwas, attesting witness was to the knowledge of the petitioner but the petitioner did not take any steps to implead the legal heirs of the deceased Ram Niwas or to summon said legal heirs to testify with regard to the handwriting of said Ram Niwas at the appropriate stage rather concluded his evidence and it was only when the case was fixed for rebuttal evidence, if any, otherwise for arguments, that an application for leading additional evidence was moved. The attempt of the petitioner is solely to fill-up the lacunae. There is no explanation whatsoever for earlier non-summoning the legal heirs of deceased Ram Niwas, attesting witness or for that matter any attempts having been made to summon the other attesting witness. Thus, it is a clear case of negligence of the petitioner and of his thereby wanting to cover-up the lacunae at the stage of rebuttal evidence, if any and arguments.

[11] The petitioner very much had knowledge about the death of Ram Niwas as also of the fact of his son having furnished his death certificate but still took no steps to summon the said legal heirs of deceased Ram Niwas. The petitioner has failed to prove exercise of due diligence or that the evidence now sought to be led by way of additional evidence could not be produced earlier while leading evidence. Reference in this context can be made to a decision of a Hon'ble Co-ordinate Bench of this Court in **Harphool Singh and another vs Sh. Siri Ram and others, 2017 (3) RCR (Civil) 615.**

[12] Accordingly, I do not find any circumstances warranting interference with the well-reasoned order dated 21.08.2019 passed by the

learned Civil Judge (Jr. Div.), Amritsar. The revision petition is bereft of merit and is accordingly dismissed as such.

(B.S. Walia)
Judge

13.09.2019
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- 1. Whether speaking/reasoned : Yes/No.
- 2. Whether reportable : Yes/No.